

STATE OF VERMONT

SUPERIOR COURT
ORANGE UNIT

CIVIL DIVISION
Docket No. _____ Oecv

STATE OF VERMONT, AGENCY OF
NATURAL RESOURCES,

Plaintiff,

v.

HEARTH & HOME TECHNOLOGIES, LLC,
Defendant.

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties' filing of Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the parties' Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221, 3 V.S.A. § 157, and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

RELIEF

1. Hearth & Home Technologies, LLC ("HHT"), shall pay a civil penalty of \$45,000. Payment shall be by certified check payable to "Treasurer, State of Vermont," and shall be received at the following address no later than thirty (30) calendar days after the date that this Consent Order is entered by signature of the Court:

Nicholas F. Persampieri
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

2. Failure to timely make the payment required by Paragraph 1 shall constitute a breach of this Consent Order, and interest shall accrue on the unpaid balance at the statutory rate of 12% per year.

3. For the purpose of demonstrating compliance with the emission limitations specified in Condition 6 of the Facility's Air Pollution Control Permit to Construct and Operate #AOP-95-173a HHT conducted a test for particulate matter emissions at each of its Randolph foundry's (the "Facility's") three main baghouses (Seneca, Wheelabrator and Fuller) between June 9-11, 2020. HHT shall furnish the Agency with a written report of the results of the three tests no later than August 10, 2020.

4. If HHT determines that an act of God, epidemic, pandemic, quarantine, or civil orders reasonably beyond its control ("Force Majeure Event") prevent or delay HHT's performance of the reporting obligation set forth in Paragraph 3 of this Consent Order, HHT shall notify the State of Vermont, through Assistant Attorney General Nicholas Persampieri, in writing within twenty-four (24) hours of the inception of such delay or prevention of performance. The notification shall describe in reasonable detail, the circumstances constituting the Force Majeure Event.

5. If the State agrees that the delay or prevention of performance has been caused by a Force Majeure Event, the Parties shall stipulate to an extension of the reporting deadline by a period equivalent to the delay actually caused by such Force Majeure Event or such other period as may be appropriate under the circumstances. Such stipulation shall be filed as a modification to the Consent Order pursuant to Paragraph 16 of this Consent Order, and shall become effective upon approval by the Court.

6. If the State does not accept HHT's claim of delay or prevention of performance caused by a Force Majeure Event, HHT shall either comply with the reporting requirement, or may submit the matter to the Court by motion for resolution. If HHT submits that matter to the court, the State shall have (20) business days to file its response to the motion. If the Court determines that the delay or prevention of performance is attributable to a Force Majeure Event, HHT shall be excused from performance for a period of time equivalent to the delay caused by the Force Majeure Event or such other period as may be determined by the Court. HHT shall bear the burden of proof on such a motion.

MISCELLANEOUS

7. While the parties stipulate that HHT does not admit or deny liability for the violations alleged in the Pleadings By Agreement, the parties stipulate and the court orders that each of the violations alleged in the Pleadings by Agreement are deemed proved and established as a "prior violation" for purposes of use in any future State proceeding that permits or requires consideration of HHT's record of

compliance, such as administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010, and permit proceedings.

8. HHT hereby waives: 1) all rights to contest or appeal this Consent Order and Final Judgment Order (“Consent Order”); and 2) all rights to contest the obligations imposed upon HHT under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.

9. This Consent Order is binding upon HHT and its successors and assigns.

10. Nothing in this Consent Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order.

11. This Consent Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, this Consent Order shall become a Final Judgment Order.

12. The sole obligations imposed on HHT by this Consent Order are the obligations to pay a civil penalty and submit a report of test results in accordance with Paragraphs 1-6. If ANR determines that the test results show one or more violations of applicable requirements, ANR may pursue any and all available remedies for such alleged violation(s), separate and apart from this action, including administrative or judicial enforcement action, and this Consent Order shall not bar such action.

13. Any violation of this Consent Order shall be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt.

14. The State of Vermont reserve continuing jurisdiction to ensure future compliance with all statutes, rules and regulations applicable to the facts and circumstances set forth herein.

15. Nothing in this Consent Order shall be construed as having relieved HHT's obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to HHT.

16. This Consent Order sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties and approved by the Court. Alleged representations not set forth in this Consent Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

17. HHT shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Pleadings by Agreement occurring before the effective date of this Order, provided that HHT fully complies with the terms of this Consent Order.

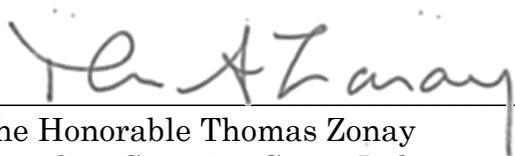
18. The Court hereby finds that the State and HHT have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid

prolonged and complicated litigation between the parties, and that this Consent Order is fair, reasonable and in the State's interest.

19. The Court hereby enters this Consent Order as an order of the Court and final judgment.

SO ORDERED, and ENTERED as FINAL JUDGMENT

Dated: 8/25/2020



The Honorable Thomas Zonay
Presiding Superior Court Judge